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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA

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12 Christine Baker, )  
13 Plaintiff, ) No. CIV-03-0525-PCT-RCB  
14 vs. ) O R D E R  
15 Fair, Isaac and Company, Inc., )  
et al., )  
16 Defendants. )  
17 \_\_\_\_\_)

18

Introduction

19 Currently pending before the court are motions by defendants  
20 Experian Information Solutions, Inc. ("Experian") (doc. 308) and  
21 ConsumerInfo.com, Inc. ("CIC") (doc. 312) for summary judgment  
22 pursuant to Fed. R. Civ. P. 56. Alternatively, Experian is moving  
23 for partial summary judgment on "Plaintiff's claims pursuant to the  
24 Fair Credit Report Act ("FCRA"), the Arizona Fair Credit Reporting  
25 Act [ ("AzFCRA") ], and Plaintiff's claim for punitive damages."  
26 Doc. 308 at 1. CIC also moves in the alternative, seeking partial  
27 summary judgment on plaintiff's FCRA and punitive damage claims.  
28 See Doc. 312 at 1.

1 Despite being court ordered to do so, plaintiff *pro se*  
2 Christine Baker did not file any opposition to these defense  
3 motions. Instead, she filed a motion for reconsideration and  
4 clarification (doc. 328) of this court's October 18, 2006 order.  
5 As part of that motion plaintiff also is seeking yet another  
6 extension of time in which to respond to the defense summary  
7 judgment motions. Additionally, she is seeking sanctions pursuant  
8 to LRCiv 83.1(f) based upon her belief that defense attorney Marc  
9 Carlson has violated the Local Rules, as well as court orders.  
10 Lastly, plaintiff is seeking clarification of the court's  
11 procedures regarding the filing of sealed documents.

## Background

13        This is plaintiff's third attempt to have "all personal  
14 identifying information and open account numbers" removed from the  
15 exhibits which defendants filed as part of their summary judgment  
16 motions. Assuming familiarity with its prior decisions in this  
17 regard, suffice it to say that plaintiff has had limited success in  
18 these attempts. Her success has been limited because, for the most  
19 part, the defendants have complied with this District's Electronic  
20 Case Filing Administrative Policies and Procedures Manual ("the  
21 Manual") in terms of redacting "personal identifiers" from those  
22 exhibits.

23 Substantively, plaintiff's motion gains nothing by repetition.  
24 Moreover, as explained below, this motion to reconsider suffers  
25 from the additional infirmity that it is untimely.

26

## **Discussion**

#### A. Reconsideration

## 1. Timeliness

4 Pursuant to Local Rule 7.2(g), "[a]bsent good cause shown, any  
5 motion for reconsideration *shall* be filed no later than ten (10)  
6 days after the filing of the Order that is the subject of the  
7 motion." LRCiv 7.2(g) (emphasis added). Computing time in  
8 accordance with Fed. R. Civ. P. 6(a), means that plaintiff Baker  
9 had until November 1, 2006, to timely file this reconsideration  
10 motion. However, plaintiff filed this motion on November 6, 2006,  
11 more than ten days after the October 18, 2006, Order which she is  
12 seeking to have this court reconsider. Plaintiff Baker does not  
13 include a statement of good cause for the delay in filing her  
14 motion for reconsideration. Thus, the court finds that this motion  
15 is *not* timely.

To be sure, Fed. R. Civ. P. 60(b) allows a longer time frame for reconsideration motions than does LRCiv 7.2. Under the former Rule, reconsideration motions "shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." Fed. R. Civ. P. 60(b). Plaintiff Baker did not specify the basis for her reconsideration motion. She cannot avail herself of the longer time frame in which to file such a motion under Fed R. Civ. P. 60(b), however, because the order which she is seeking to have this court reconsider is interlocutory in that no final judgment has yet been entered in this case. See United States v. Little, No. CV-F-02-5141 REC/DLB, 2006 WL 2432270, at \*1 (E.D.Cal. Aug. 21, 2006) (Rule 60(b) does not "apply to defendants'[reconsideration]

1 motion because no judgment has been entered in favor of the  
2 [plaintiff]."); see also Connors v. Iquique U.S.L.L.C., No. C05-  
3 334JLR, 2005 WL 3007127, at \*7 (W.D.Wash. Nov. 9, 2005) (citing  
4 Santa Monica Baykeeper, 254 F.3d 882, 886-87 (9<sup>th</sup> Cir. 2001)) ("Rule  
5 60(b) does not apply to non-final orders.") Stated somewhat  
6 differently, this court's October 18, 2006, order did not "end[]  
7 the litigation on the merits and leave[] nothing for the court to  
8 do but execute the judgment." See Catlin v. United States, 324  
9 U.S. 229, 233 (1945). Quite the contrary, as is evidenced by the  
10 pending defense summary judgment motions, there are a host of  
11 issues which the court must resolve before entering a final  
12 judgment in this action. Therefore plaintiff cannot avail herself  
13 of the longer time frame for seeking reconsideration under Rule  
14 60(b).

15 **2. "Inherent Discretion"**

16 Notwithstanding Rule 60(b) and the Local Rules, the court is  
17 fully aware of its "inherent discretion to reconsider interlocutory  
18 orders" such as this court's October 18, 2006 Order. See Hansen v.  
19 Schubert, 459 F.Supp.2d 973, 988 n.5 (E.D.Cal. 2006). Indeed, as  
20 the Advisory Committee Notes to the 1946 amendments to Rule 60(b)  
21 make clear, "interlocutory judgments are not brought within the  
22 restrictions of the rule, but rather they are left subject to the  
23 complete power of the court rendering them to afford such relief  
24 from them as justice requires." Fed. R. Civ. P. 60(b) Advisory  
25 Committee Notes (1946 Amendments); see also American Rivers v. NOAA  
26 Fisheries, No. CV-04-00061-RE, 2006 WL 1983178, at \*2 (D.Or. July  
27 14, 2006) (citing, *inter alia*, Credit Suisse First Boston Corp. v.  
28 Grunwald, 400 F.3d 1119, 1124 (9<sup>th</sup> Cir. 2005)) (A "district court

1 [has] inherent common-law authority to rescind or modify any  
 2 interlocutory order as long as the court retains jurisdiction over  
 3 the matter.") Despite the foregoing, Rule 60 provides a "helpful  
 4 guide" to this court's inherent discretion. See Hansen, 459  
 5 F.Supp.2d at 998 n.5.

6 Rule 60(b) allows a court to reconsider a prior order on a  
 7 variety of grounds: "(1) mistake, surprise, or excusable neglect;  
 8 (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5)  
 9 a satisfied or discharged judgment; or (6) 'extraordinary  
 10 circumstances' which would justify relief." Lee v. State Farm  
 11 Mutual Automobile Insur. Co., No. CV 03-624-TUC-HCE, 2006 WL  
 12 2917348, at \*1 (D.Ariz. Oct. 10, 2006) (quoting Backlund v.  
 13 Barnhart, 778 F.3d 1386, 1388 (9<sup>th</sup> Cir. 1985)). Plaintiff Baker is  
 14 not relying upon any of these bases for reconsideration. Instead,  
 15 she contends that defendants and their attorney, Marc Carlson,  
 16 violated A.R.S. § 44-1373, because supposedly the exhibits filed as  
 17 part of the defense summary judgment motions contain "personal  
 18 identifying information and open account numbers."<sup>1</sup> As an

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20 <sup>1</sup> As an aside, the court observes that plaintiff's reliance upon A.R.S.  
 21 § 44-1373 is wholly misplaced. Plaintiff is relying upon two different sub-parts  
 22 of that statute. First, she is relying upon subpart (A)(1) which provides as  
 23 follows:

24        Except as otherwise specifically provided  
 25        by law, beginning on January 1, 2005, a person  
 26        or entity shall not:

27            Intentionally communicate or otherwise make  
 28            an individual's social security number available  
 29            to the general public.

30 A.R.S. § 44-1373(A)(1) (West Supp. 2006). As explained in this court's prior  
 31 orders, including its order of October 18, 2006, the challenged exhibits do not  
 32 contain plaintiff's social security number. See Doc. 318 at 4; and Doc. 327 at 5.  
 33 Thus, there has been no violation of section 44-1373(A)(1).

34 Plaintiff fares no better with her reliance upon sub-part (G)(1) of section  
 35 44-1373. That statute provides in relevant part:

1 additional basis for reconsideration, plaintiff contends that the  
2 filing of those exhibits violates section 1681b of the FCRA.<sup>2</sup> Even

3

4 Except as otherwise provided by law,  
5 documents or records that are recorded  
6 and made available on the recording entity's  
7 public web site *after the effective date of*  
*this amendment* to this section shall not contain  
more than five numbers that are reasonably identifiable  
as being part of an individuals' social security  
number and shall not contain an individual's:

8

Credit card, charge card or debit card numbers.

9 A.R.S. § 44-1373(G)(1) (West Supp. 2006) (emphasis added). Plaintiff completely  
10 overlooks the fact, however, that the effective date of that statute is January 1,  
overlooks the fact, however, that the effective date of that statute is January 1,  
2007. See id. Therefore, it does not govern the present dispute which centers  
around documents filed in 2006.

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12 <sup>2</sup> Clearly this is not so at least with respect to defendant CIC. That  
statute states in pertinent part:

13 [A]ny consumer reporting agency may furnish  
a consumer report under the following circumstances  
and no other:

14

In response to the order of a court having  
jurisdiction to issue such an order, or a subpoena  
issued in connection with proceedings before a  
Federal grand jury.

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16 15 U.S.C. § 1681b(a)(1) (West Supp. 2006) (emphasis added). The FCRA broadly  
defines a consumer reporting agency as:

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any person which, for monetary fees, dues,  
or on a cooperative nonprofit basis, regularly  
engages in whole or in part in the practice of  
assembling or evaluating consumer credit information  
or other information on consumers for the *purpose*  
of *furnishing consumer reports to third parties*, and  
which uses any means or facility of interstate commerce  
for the purpose of preparing or furnishing consumer  
reports.

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15 U.S.C. § 1681a(f) (West 1998) (emphasis added).

19

20 In the present case, plaintiff does not, and indeed cannot, allege that  
defendant CIC is a consumer reporting agency within the meaning of the FCRA. CIC  
21 does not "assemble[] nor evaluate[] consumer credit information for the purposes  
of furnishing consumer reports to third parties to make credit decisions." Doc.  
312 at 3-4. Rather, CIC "purchases credit data and products from credit bureaus,  
reformats it, and resells its credit products to the consumers who are the subject  
of those reports." Doc. 314 (Decl'n of David Williams (Aug. 30, 2006)) at 2, ¶ 3  
(emphasis added). Thus, because CIC does not fall within the definition of a  
22 credit reporting agency for purposes of FCRA liability, it is not subject to  
section 1681b(a)(1) of that statute. Accordingly, even if plaintiff's motion was

1 if timely, the court would decline to exercise its "inherent  
 2 discretion" to reconsider its October 18, 2006 interlocutory order  
 3 because plaintiff is not asserting any of the potential grounds for  
 4 relief enumerated in Rule 60(b). See Fuller v. M.G. Jewelry, 950  
 5 F.2d 1437, 1442 (9<sup>th</sup> Cir. 1991) (district court "properly denied"  
 6 reconsideration motion where none of the Rule 60(b) factors were  
 7 present); Backlund v. Barnhart, 778 F.2d 1386, 1388 (9<sup>th</sup> Cir. 1985)  
 8 (same). A motion for reconsideration is not a vehicle for raising  
 9 arguments which could have been raised before, yet that is exactly  
 10 what plaintiff Baker is seeking to do here. Grant v. I.R.S., No.  
 11 MC06-0079-PHX-DGC, 2007 WL 158729, at \*1 (D. Ariz. Jan. 16, 2007)  
 12 (citing, *inter alia*, Northwest Acceptance Corp. v. Lynnwood Equip., Inc.,  
 13 841 F.2d 918, 925-26 (9<sup>th</sup> Cir. 1988)); see also Martinez-  
 14 Vazquez v. I.N.S., 346 F.3d 903, 905 n.4 (9<sup>th</sup> Cir. 2003), cert.  
 15 denied, 543 U.S. 1095 (2005) (citation omitted) ("district court  
 16 had discretion not to consider the [defendant's] new argument,  
 17 advanced for the first time in its motion for reconsideration[]").  
 18 Nothing prevented plaintiff Baker, when she moved for a protective  
 19 order on September 28, 2006, from arguing that the filing of the  
 20 defense summary judgment exhibits violated either A.R.S. § 44-1373  
 21 or section 1681b of the FCRA. Thus, for all of these reasons the  
 22 court denies plaintiff Baker's motion for reconsideration of its  
 23 October 18, 2006 interlocutory order.

24 **B. Extension of Time**

25 As she did in her September 28, 2006, motion for a protective

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27 timely, her argument that she is entitled to reconsideration because CIC violated  
 28 section 1681b(a)(1) of the FCRA is unavailing.

1 order, etc., plaintiff is seeking a thirty day extension of time in  
2 which to respond to defendants' summary judgment motions. Also, as  
3 she did in her prior motion, plaintiff requests that that thirty  
4 days commence running "AFTER all [her] credit reports with account  
5 numbers and personal data [a]re removed from PACER[.]" Doc. 328 at  
6 12 (emphasis in original).

7 Although the court declines to grant plaintiff's motion for  
8 reconsideration, it will grant her an extension of time in which to  
9 respond to the pending summary judgment motions by Experian and  
10 CIC. The primary reason for granting this extension is that the  
11 court believes that the interests of justice will best be served by  
12 proceeding with a fully developed record on these motions. Thus,  
13 plaintiff shall file and serve a response to defendants' summary  
14 judgment motions (doc. 308 and 312) on or before 5:00 p.m., March  
15 19, 2007. Plaintiff is forewarned that if she fails to timely  
16 respond, and/or instead makes the strategic decision which she did  
17 in this instance, *i.e.* to file a motion seeking another form of  
18 relief, she runs the risk of the court granting defendants' motions  
19 for summary judgment in their entirety.

20 In light of the foregoing, the defendants' shall have until on  
21 or before 5:00 p.m., March 28, 2007, by which to file a reply to  
22 plaintiff's response to their summary judgment motions. To the  
23 extent defendants are seeking summary judgment dismissing this  
24 action in its entirety, defendants' replies should address not only  
25 plaintiff's response arguments but they should also insure that  
26 they have thoroughly briefed *each and every cause of action* in  
27 plaintiff's FAC.

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2        C. Clarification of Sealing Procedures

3        In this motion plaintiff is also "request[ing] clarification  
4 regarding the procedures to seal documents[.]" Doc. 328 at 16.  
5 Among other inquiries, plaintiff is asking whether "the Court  
6 [would] order the removal of documents from PACER if the filer  
7 requested so[.]" Id. The court will not entertain such  
8 hypothetical inquiries. What is more, in this court's opinion,  
9 there is no need for clarification of the procedures for sealing  
10 documents in this district. Therefore, the court denies this  
11 request.

12        D. Sanctions

13        As she has previously, plaintiff is seeking sanctions against  
14 attorney Carlson. Despite plaintiff's assertions to the contrary,  
15 defendant Carlson has *not* engaged in any sanctionable conduct.  
16 Therefore, the court denies this aspect of plaintiff's motion as  
17 well.

18        Conclusion

19        IT IS ORDERED that plaintiff Christine Baker's "Motion for  
20 Reconsideration and Clarification" (Doc. 328) is DENIED in its  
21 entirety.

22        IT IS FURTHER ORDERED that plaintiff Baker's response to the  
23 summary judgment motions previously filed by defendants Experian  
24 and CIC shall be filed on or before 5:00 p.m., March 19, 2007.

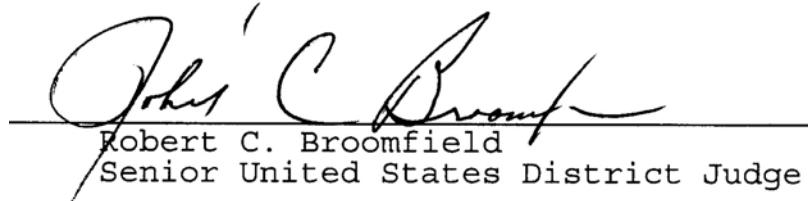
25        IT IS FURTHER ORDERED that defendants Experian and CIC shall  
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1 file a reply to plaintiff's response on or before 5:00 p.m., March  
2 28, 2007.

3 DATED this 27th day of February, 2007.

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5   
6 Robert C. Broomfield  
7 Senior United States District Judge  
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